

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:07CR40

ROOSEVELT SIMMONS,

Defendant.

REPORT AND RECOMMENDATION THAT MOTION TO DISMISS BE DENIED

I. Introduction

A. Background

Defendant is the only defendant in a one count indictment charging him with being a felon in possession of a firearm.

B. The Motion

Motion to Dismiss the Indictment.¹

C. Recommendation

I recommend the Motion to Dismiss the indictment be **DENIED** because any prejudice caused by late disclosure became moot when the trial was continued.

II. Facts

There was no testimony or other evidence at the hearing on the motion.

The docket indicates the Motion to Dismiss was filed May 12, 2008. At the time the Motion to Dismiss was filed, trial was scheduled for May 20, 2008.

¹ Doc. No. 95.

III. The Motion

A. Contentions of the Parties

Defendant contends the Government failed to comply with the February 13, 2008 scheduling order. Specifically, the defendants contends the Government did not provide Rule 404(b), Giglio, Roviario and Jencks Act material by May 6, 2008 or the proposed voir dire, motions in limine and jury instructions by May 9, 2008. Defendant contends this delay prohibited counsel from adequate trial preparation.

The Government filed no responsive pleading and did not appear at the hearing.

B. Discussion

On May 19, 2008, the Court continued the trial until August 26, 2008. Any prejudice to defendant caused by late disclosure no longer exists.

C. Recommendation

I recommend the Motion to Dismiss the indictment be **DENIED** because any prejudice caused by late disclosure became moot when the trial was continued.

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Report and Recommendation, file with the Clerk of the Court the written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to provide a copy of this Report and Recommendation to parties who appear pro se and all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

DATED: July 31, 2008

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE